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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TOMMY C., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, A.C., CHEROKEE NATION OF
OKLAHOMA, *Appellees*.

No. 1 CA-JV 21-0084
FILED 9-9-2021

Appeal from the Superior Court in Maricopa County
No. JD530269
The Honorable Connie Contes, Judge *Retired*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Mesa
By Thomas Jose
Counsel for Appellee Department of Child Safety

Robert D. Rosanelli, Attorney at Law, Phoenix
By Robert D. Rosanelli
Counsel for Appellant Tommy C.

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge David D. Weinzweig and Judge Paul J. McMurdie joined.

S W A N N, Judge:

¶1 This is an appeal from an order severing parental rights. We affirm because sufficient evidence supports the severance.

FACTS AND PROCEDURAL HISTORY

¶2 Tommy C. (“Father”) is the biological father of A.C., born in June 2019.¹

¶3 In August 2019, the Department of Child Safety received a report that Father had engaged in domestic violence with A.C.’s mother in front of children, was using illegal drugs, was unemployed, and often left A.C. in the care of her drug-using maternal grandmother. When the Department arrived at Father’s residence to investigate the report, his conduct and statements led the investigators to believe that Father had been about to leave A.C. and a four-year-old child alone in the residence. The four-year-old reported that she had seen Father and A.C.’s mother hit each other hard. The mother denied any domestic violence but admitted that she and Father recently had an argument that caused her to call the police. Others interviewed by the Department disclosed that Father had a history of abusing alcohol, pills, and methamphetamine, that he had not consistently parented his older children, and that they suspected him of selling drugs. The Department also discovered that Father had a history with the Department and a history of domestic violence, including violence against A.C.’s mother in the presence of a child. Father, however, denied any previous Department involvement or domestic violence. He also denied any current drug use.

¶4 The Department took custody of A.C. and filed a dependency petition. Father ultimately elected not to contest the dependency, and A.C. was found dependent as to him in May 2020.

¹ A.C.’s mother’s rights were severed concurrent with Father’s. The mother, however, is no longer a party to this appeal.

TOMMY C. v. DCS, et al.
Decision of the Court

¶5 The Department offered substance-abuse testing and treatment to Father – the Department set up two random drug screens in September 2019; arranged referrals for random urinalysis testing in September 2019, November 2019, January 2020, and April 2020; and set up treatment intakes in December 2019 and May 2020. Father, however, never participated in those services. Father failed to meet with a Department specialist to arrange domestic violence counseling despite the specialist’s monthly requests to meet. Nor did he provide proof of income and housing as requested.

¶6 Father had close to no contact with A.C. after her removal. Though he was offered supervised visitation, he saw A.C. only once after her removal, in October 2019. And though he cooperated with a case aide to set up visits in February and March 2020, those visits were canceled based on his failure to either confirm the visits or timely request transportation. He was closed out of supervised visits in June 2020 due to lack of contact.

¶7 In July 2020, the Department moved to sever Father’s parental rights as to A.C. under A.R.S. § 8-533(B)(1) (abandonment) and § 8-533(B)(8)(a) (nine months’ time in care). Father contested the motion, and the matter proceeded to trial in October and November 2020.

¶8 At the trial, the Department produced evidence of Father’s failure to engage with the Department specialist and participate in services. The specialist also testified that A.C. was placed in an appropriate adoptive home; the placement family had already adopted some of A.C.’s half-siblings, with whom she had significant relationships; and severance and adoption would provide A.C. permanence and stability. An ICWA specialist testified that continued parental custody would likely result in serious physical or emotional damage to A.C., severance and adoption was the most appropriate case plan, and A.C.’s current placement, though not ICWA-compliant, was appropriate because of her half-siblings’ presence.

¶9 For his part, Father testified that his failure to maintain contact with A.C. was attributable to difficulties he experienced using a virtual platform during the COVID-19 pandemic. He claimed that “videos” would “freeze or they just wouldn’t call through” – “[i]t was just, I guess, the cell phone connection or just the app that they had us using to connect with each other.” He stated that he had informed the Department specialist about the problem but “slowly she just stopped having contact.” He also mentioned recently losing his phone and therefore being unable to access emails. He denied ever having a substance-abuse problem, denied any

TOMMY C. v. DCS, et al.
Decision of the Court

current domestic violence, and explained that “[t]he only reasons I didn’t participate [in services] at first is because there’s no history. I have no reason to have to do certain things” He said that he received insufficient guidance on how to participate in substance-abuse and domestic-violence treatment. He blamed the Department specialist for not keeping in contact with him or answering his questions, and he stated he had tried to contact her supervisors without success. He further denied being told that in-person visits had become available.

¶10 The superior court severed Father’s parental rights as to A.C. on both grounds alleged. Father appeals.

DISCUSSION

¶11 To sever a parent–child relationship, the superior court must find by clear and convincing evidence at least one of the grounds set forth in A.R.S. § 8-533(B), and must find by a preponderance of the evidence that severance is in the child’s best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41 (2005); *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). We accept the court’s findings of fact unless they are not supported by reasonable evidence, and we will affirm the severance order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶12 Father challenges the sufficiency of the evidence supporting the superior court’s determination that severance was warranted under A.R.S. § 8-533(B)(1) or (B)(8)(a). We hold that reasonable evidence supported severance under § 8-533(B)(1). We therefore do not address whether severance also was warranted under § 8-533(B)(8)(a). *Crystal E. v. Dep’t of Child Safety*, 241 Ariz. 576, 577, ¶ 5 (App. 2017). Nor do we address whether severance was in A.C.’s best interests because Father waived that issue by failing to challenge it. *See id.* at 577–78, ¶¶ 5–8.

¶13 Severance is warranted under § 8-533(B)(1) if “the parent has abandoned the child.” Under § 8-531(1), abandonment means

the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

TOMMY C. v. DCS, et al.
Decision of the Court

“[A]bandonment is measured not by a parent’s subjective intent, but by the parent’s conduct: the statute asks whether a parent has provided reasonable support, made more than minimal efforts to support and communicate with the child, and maintained a normal parental relationship.” *Michael J.*, 196 Ariz. at 249–50, ¶ 18. Whether the parent’s conduct constitutes abandonment is a case-dependent inquiry. *Id.* at 250, ¶ 20; *see also Kenneth B. v. Tina B.*, 226 Ariz. 33, 37, ¶ 19 (App. 2010). In examining the effect of a parent’s incarceration on the inquiry, our supreme court has held that “when ‘circumstances prevent the . . . [parent] from exercising traditional methods of bonding with his [or her] child, he [or she] must act persistently to establish the relationship however possible and must vigorously assert his [or her] legal rights to the extent necessary.’” *Michael J.*, 196 Ariz. at 250, ¶ 22 (citation omitted). That is, the parent must “do something, because conduct speaks louder than words or subjective intent.” *Id.* (citation omitted).

¶14 Here, the superior court found that Father had abandoned A.C. because he “made, at best, only minimal efforts to support and communicate with the child.” Reasonable evidence supported that finding. Father visited A.C. only once after she was removed in late August 2019. While Father blamed his lack of contact on technological barriers occasioned by the COVID-19 pandemic, Arizona imposed no pandemic restrictions until March 2020. Office of the Governor, Declaration of Emergency *COVID-19*, Mar. 11, 2020 (https://azgovernor.gov/sites/default/files/declaraton_0.pdf). Father did not explain his approximately five-months-long failure to maintain contact with A.C. before any restrictions could have been imposed; indeed, the record showed that his failure to communicate with the Department led to the cancellation of a series of visits in April and March 2020. And even crediting Father’s testimony that he encountered technological difficulties after March 2020 and the specialist was not responsive, the record does not reveal that he “acted persistently” to overcome those barriers. Notably, he never raised the issue with the court despite telephonically attending hearings in May and July 2020. Nor did he seek to establish contact with A.C. through an alternative medium or provide her with support.

TOMMY C. v. DCS, et al.
Decision of the Court

CONCLUSION

¶15 Reasonable evidence supports the superior court's order severing Father's parental rights to A.C. We therefore affirm.



AMY M. WOOD • Clerk of the Court
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